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OFFICE OF PETITIONS

In re Application of :
Mae et al. :
Application No. 10/588,034 : ON APPLICATION FOR
Filed: August 1, 2006 : PATENT TERM ADJUSTMENT
Attorney Docket No. 09812.0566 :
Title: IMAGE RECORDING :
APPARATUS AND METHOD, AND :
PROGRAM FOR SELECTING A :
RECORDING MODE INDEPENDENT FROM :
THE RECORDING ASPECT RATIO :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT-PRE-GRANT," filed March 8, 2011. Applicants submit that the correct patent term adjustment to be indicated on the patent is eight hundred ninety-seven (897) days, not five hundred eighty-three (583) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

The request for review of the patent term adjustment is **DISMISSED**.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

On December 9, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated the patent term adjustment to date is 583 days.

Applicants dispute the 583 day adjustment. Applicants contend the requirements under 371 were met on August 1, 2006. Thus, applicants contend an adjustment of 897 days is required.

The Office has considered applicants' argument and finds it unpersuasive that an adjustment of 897 days, instead of 583 days

is warranted. Applicants contend a 897 day adjustment is required for failure by the Office to mail at least one of the notifications under 35 U.S.C. 132 not later than fourteen months after the date on which the application fulfilled the requirements under 35 U.S.C. 371, pursuant to 37 CFR §1.702(a)(1).

A non-final Office action was mailed on March 16, 2010, which is 14 months and 583 days after the application fulfilled the requirements of 35 U.S.C. 371 on June 10, 2007. Applicants contend fulfillment of the application was met on August 1, 2006.

A review of the record shows that the requirements of 35 U.S.C. 371 were fulfilled on June 10, 2007. As early commencement was not requested, the last of 371 requirements to be completed was commencement at 30 months on June 10, 2007. Thus, the mailing of the non-final Office action on March 16, 2010, is 14 months and 583 days after fulfillment.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 583 days.

As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee¹.

¹ For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3215.

A handwritten signature in cursive script, appearing to read "Charlema Grant".

Charlema Grant
Petition Attorney
Office of Petitions

See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.